Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

ALBERT JOHN LEMONS, also known as "Tooter," *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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ALBERT JOHN LEMONS

43(?)

QUESTIONS PRESENTED

In light of the ruling of the Supreme Court of the United States in *Apprendi v. New Jersey,* -- U.S. ---, 120 S.Ct. 2348, --L.Ed.2d -- (2000), whether it was error for the trial court to have determined the amount of crack cocaine for which the Petitioner was "responsible" and whether it was error for the trial court to have determined that Petitioner willfully obstructed, impeded or attempted to obstruct or impede justice instead of submitting those issues to the jury.

Albert Lemons respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

LIST OF ALL PARTIES

The persons listed below are all parties to the proceeding in the court whose judgment is sought to be reviewed.

1. UNITED STATES OF AMERICA

Represented at trial by Mike Bradford, United States Attorney, and Heather Rattan, Assistant United States Attorney, One Grand Center, Suite 500, Sherman, Texas, 75090

2. RONALD EUGENE KELLY, also known as "Rahoo", also known as Ronald Morrison

Represented at trial and on appeal by William J. Stith, Adams & Stith, Suite 313, 520 Central Parkway, E. Plano, Texas, 75074

3. ALBERT JOHN LEMONS, also known as "Tooter"

Represented at trial on appeal by John G. Tatum, Nacol, Wortham & Associates, 990 S. Sherman Street, Richardson, Texas 75081

4. CURLEY RAY MORRISON

Represented at trial and on appeal by James Patrick Fallon, 111 A North Travis, Sherman, Texas, 75090

5. CHARLES RAY GENTRY, JR.

Represented at trial by B. Keith Brown, 402 West Lamar, Sherman, Texas, 75090, and on appeal by Anthony D. Lyons, 600 S. Zang Blvd., Suite 400, Dallas, Texas 75208

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Abbreviations

"R" refers to the appellate record and the number that follows refers to the page cited in the record

"TR" refers to Transcript of Trial before the Honorable Paul Brown, United States District Judge, and a Jury

"TR Sentencing" refers to the Transcript of Sentencing Hearing before the Honorable Paul Brown, United States District Judge, held on 5/19/200

"PSR"refers to the Presentencing Investigation Report (sealed) filed by the Government

"Defendant's Sentencing" refers to Defendant's Sentencing Recommendation (sealed) filed by Albert John Lemons.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

Albert John Lemons, also known as "Tooter," *Petitioner*

v.

United States of America, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINIONS BELOW

The opinion of the court of appeals (App., infra, 1-5) is unreported. The opinion of the district court (App., infra, 6-14) is unreported.

JURISDICTION

The Court of Appeals entered its judgment on August 15, 2001(App., infra, 1-5). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are as follows: 18 U.S.C. §2, 21 U.S.C. §841 (a)(1), d ; 21 U.S.C. §841 (b)(1)(A)(B); 21 U.S.C. §846.

STATEMENT OF FACTS

A. Background and Course of Proceedings

The Petitioner was charged in an indictment filed November 10, 1999 (App., infra, 15-31), with conspiracy to possess, with intent to deliver, cocaine base ("crack") contrary to 21 U.S.C. §846, (R 1) and possession of cocaine base with intent to distribute or actual distribution of cocaine base, and/or aiding and abetting the possession with intent to distribute or distribution of cocaine base, contrary to 21 U.S.C. §841 (a)(1) and 18 U.S.C. §2. (R 26, 30.).

On February 7, 2000, a jury trial was had upon the Petitioner's plea of not guilty to all counts before the Honorable Paul Brown, United States District Judge for the Eastern District of Texas, Sherman Division. (TR 6). At the conclusion of this trial, the Petitioner was found guilty of all the counts as charged in the indictment. (R 117; TR 1058).

The government's DEA witnesses testified in summary that they were in the Sherman/Denison, Texas area at the request of local police departments to help investigate what was believed to be a crack distribution organization. (TR 119). The DEA used two paid Confidential Informants, Diana Story and Ira McDade, to aid its investigation. Each was paid $100 for an initial purchase of crack and $50 for each subsequent purchase from that person. Each informant had a criminal history. They targeted a residential area near the residences of Terry Braxton, Vera Dade (who lived with Albert Lemons), Phillip Wright and Ronald Kelly. All were co-defendants except Vera Dade. (TR 128).

The evidence presented by the government consisted of a series of buys of various amounts of crack from different individuals in the residential area from April to November 1999. All of these transactions were recorded either on video or audio tape that was played for the jury. Petitioner does not appear on any tapes nor was there any evidence of any direct dealing or sales of crack between Petitioner and any informant or other person.

The government's evidence began with the investigation of a New Year's Eve party at a club owned by another co-defendant Charles Gentry, where an individual not named in the indictment was arrested (an extraneous offense). (TR 155-197).

Thereafter, McDade testified about several controlled buys, none of which involved Petitioner. McDade made $7,000 for his work. (TR 224).

Phillip Wright, a co-defendant, pleaded guilty and testified about selling crack to an informant (TR 278-282). He knew Petitioner lived in the neighborhood but did not know him and had no dealings with him in regard to Wright's sales of crack because they lived "in two separate worlds." (TR 302).

Story, the other Confidential Informant, received $17,000 and money for rent and car repairs. (TR 331, 407). She testified about numerous controlled buys she made in the neighborhood that were taped. She did not have any direct dealings with Petitioner but made innuendos against him.

Defendants Jimmie Daniels and Braxton pleaded guilty and made deals for leniency for their testimony. They were the government's only witnesses to provide links to Petitioner, claiming he helped supply Braxton. Daniels admitted that he was always high on crack and Braxton, an admitted liar and perjurer, was often impeached. (TR 841-846). Braxton had prior federal felony drug convictions. (TR 832-838).

The government introduced evidence of a search warrant executed against the home of Dade and Petitioner. No contraband or cash was recovered, but the government used evidence obtained to show Petitioner bought an eleven year old truck, took a cheap Las Vegas vacation with Dade and other friends not part of trial and bought some children's furniture (TR 581-701) to support its position that he was a drug dealer. This evidence was contradicted by the testimony of defense witness Dade. (TR 908-938).

Nicole McBee testified she made a deal for leniency for her testimony and implicated Braxton and Gentry in several transactions but exonerated Petitioner from any dealings of crack. (TR 747-763). The jury found Petitioner guilty as charged in the indictment.

Sentencing

On May 19, 2000, a sentencing hearing was had before the Honorable Paul Brown, United States District Judge for the Eastern District of Texas, Sherman Division. (R 150; TR Sentencing 1-11). At the hearing the judge relied upon certain alleged facts from its

presentence report that were not found by the jury to be true beyond a reasonable doubt. At the conclusion of that hearing, the judge assessed Petitioner's punishment at imprisonment for a term of 180 months for each count with all sentences to run concurrently. (R 290; TR Sentencing 14).

B. Disposition of Issue Below

Trial of this matter was held February 2, 2000. This court issued its decision in *Apprendi v. New Jersey*, -- U.S. ---, 120 S.Ct. 2348, -- L.Ed.2d on June 26, 2000. As a result, the issues, as they specifically relate to the *Apprendi* decision and its application were not raised with the trial court. In its opinion, the Court of Appeals noted "that either Apprendi does not apply to the facts of the appellants' cases or the error was harmless" (App. 5, infra).

REASONS FOR GRANTING THE PETITION

I. The Questions Presented Are Important

The issue involves the application of basic constitutional principles as reaffirmed in the *Apprendi* case. The United States Constitution requires that facts that give rise to conduct that is to be adjudged criminal and made part of the crime and/or punishment be alleged and proven to the finder of fact beyond a reasonable doubt. This constitutional mandate was not applied to the case at bar.

II. The Decision of the Court of Appeals is Erroneous

In *Apprendi*, the Supreme Court held that any fact that increases the prescribed statutory maximum penalty to which a criminal defendant is exposed (except the fact of a prior conviction) must be submitted to a jury and proven beyond a reasonable doubt. Id. at 2362-63.

Petitioner was convicted and sentenced under 21 U.S.C. §§ 841 and 846. The Trial Court, not a jury, determined the quantity of drugs for which Petitioner was responsible and did so under the standard of preponderance of the evidence as opposed to beyond a reasonable doubt.

The Trial Court, not a jury, found that Petitioner willfully obstructed, impeded or attempted to obstruct or impede justice and did so under the standard of preponderance of the evidence as opposed to beyond a reasonable doubt. This finding increased Petitioner's offense level by two points and subjected him to a longer prison sentence.

Pursuant to *Apprendi,* these questions of fact should have been determined by a jury and proven beyond a reasonable doubt because the determinations increased the prescribed statutory maximum penalty to which Petitioner was exposed.

The Fifth Circuit Court of Appeals rejected the arguments that *Apprendi* prohibits the trial court from determining the amount of drugs for relevant conduct purposes under the Sentencing Guidelines and prohibits the trial court from making findings regarding obstruction of justice to enhance offense levels. The Fifth Circuit has stated that the decision in *Apprendi* was specifically limited to facts which increase the penalty beyond the statutory maximum and does not invalidate a court's factual finding for the purposes of determining the applicable Sentencing Guidelines. *United States v. Doggett,* 230 F.3d 160 (5th Circuit).

In *United States v. Meshack*, 225 F.3d 556 (5th Circuit, 2000), as in the current case, the minimum statutory range for punishment was zero to twenty years. See 21 U.S.C. § 841(a)(1). The court held in both instances that since the defendant's sentence was within this range, it was permissible because the sentence was not enhanced beyond the statutory range based on a fact not contained in the indictment or presented to the jury.

Although the amount of crack cocaine he was charged with possessing did not enhance his sentence beyond the statutory sentence range, it did cause Petitioner to receive a higher sentence within this range based on the application of a Sentencing Guidelines enhancement. In *Meshack*, the Fifth Circuit stated that "*Apprendi* does not clearly resolve whether an enhancement which increases a sentence within the statutory range but which does not increase the sentence beyond that range must be proved to the jury.. However, the opinion suggests the more limited rule: 'fact[s] that increase[ ] the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.' *Apprendi*, 120 S.Ct. at 2362-63 (emphasis added). The court concluded that "Given that the more limited reading of *Apprendi* is a more plausible reading of the case, and

given the profound effect a broader rule would have on existing Supreme Court and Fifth Circuit precedent, we believe the limited reading of *Apprendi* is the more desirable one."

The question should not be whether one reading is more desirable than another but whether citizens are protected from the exercise of government power as authorized or limited by the Constitution of the United States.

Based on the opinion in *Meshack*, it is clear that the Fifth Circuit was unsure of the application of *Apprendi*. Further, since the Fifth Circuit has adopted a position in conflict with the plain language of *Apprendi*, it is important that the court grant this writ of certiorari and apply its ruling in Apprendi to the fact situation presented in this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 00-40212

U.S. COURT OF APPEALS FILED
AUG 15 2001
CHARLES R. FULBRUGE III, Clerk

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VERSUS

RONALD EUGENE KELLY, also known as "Rahoo", also known as Ronald Morrison, ALBERT JOHN LEMONS, also known as "Tooter"; CURLEY RAY MORRISON; CHARLES RAY GENTRY, JR.,
Defendants-Appellants.

Appeals from the United States District Court
For the Eastern District of Texas
(4:99-CR-90)

Before JONES, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:

This appeal, involving several appellants, arises out of a drug conspiracy in Grayson County, Texas. In March 1999, the Drug Enforcement Agency ("DEA") came into Grayson County at the behest of the local police. The investigation utilized

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Pursuant to 5th CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

various confidential informants and undercover officers and included several controlled buys. Many of those transactions were recorded on audio and videotape and were concentrated in a two or three block area.

The government ultimately arrested and obtained a multi-count indictment against Defendants-Appellants Ronald Eugene Kelly, Albert John Lemons, Curley Ray Morrison, Charles Ray Gentry, Jr., and several other individuals. The indictment charged various crimes, including conspiracy to possess with intent to distribute cocaine base ("crack"), substantive acts of distribution of crack, and employment of a minor to distribute crack. The appellants entered not guilty pleas, but the jury returned guilty verdicts against all of them.

On appeal, the appellants individually raise several issues, some of which are germane to the other appellants' cases. We note the appellants' points of error in turn.

Kelly argues that there was insufficient evidence to convict him of Counts 1 and 18. Count 1 charged Kelly with conspiracy to possess with intent to distribute crack in violation of 21 U.S.C. § 846. Count 18 alleged that Kelly employed a person under the age of eighteen to distribute and possess with intent to distribute crack in violation of 21 U.S.C. § 841(a)(1). Furthermore, Kelly contends that the district court erred in its jury instructions. He asserts that the district court failed to instruct properly on

multiple conspiracies, the difference between aiding and abetting and actually becoming a member of a conspiracy, and the meaning of "mere presence."

Lemons also insists that there was insufficient evidence to support his convictions for Counts 1, 19, and 23. As previously noted, Count 1 charged conspiracy to possess with intent to distribute crack. Counts 19 and 23 pertained to specific substantive acts of distribution. Moreover, Lemons believes that the district court violated ***Apprendi v. New Jersey,*** 120 S. Ct. 2348 (2000),[1] by failing to submit to the jury two issues: 1) the amount of crack attributable to his actions and 2) whether he willfully obstructed, impeded, or attempted to obstruct or impeded justice. Additionally, he appears to argue in the alternative that there was insufficient evidence to support the trial court's findings regarding the amount of drugs and that he willfully obstructed, impeded, or attempted to obstruct or impede justice. Besides those alleged points of error, Lemons contends that the district court erred by not allowing him to impeach a witness's alleged prior inconsistent statement. And he charges that the district court and the government intimidated or coerced witnesses that were to testify on his behalf and, thus, denied him his Sixth and

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[1] ***Apprendi*** held that any fact, other than a prior conviction, that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury. 120 S. Ct. at 2363-64.

Fourteenth Amendment rights. Lemons's kitchen-sink brief further asserts that the trial court erred in admitting certain evidence of another drug crime, which was supposedly extraneous and prejudicial. Finally, he states that the district court erred in denying his motion to sever and his motion for a bill of particulars.

Like Lemons, Morrison presents an ***Apprendi*** issue. He asserts that the district court erred in not submitting to the jury the amount of crack for which he was held responsible. In addition, Morrison believes that the district court erred in failing to make a finding that he had a minimal role in the drug offenses, especially the conspiracy.

The last appellant Gentry raises three specific issues. First, like Lemons and Morrison, he refers to ***Apprendi,*** alleging that the district court should have submitted to the jury the determination as to the amount of crack for which he was found responsible. Second, Gentry points to as error the district court's decision to admit certain allegedly extraneous evidence, which Lemons also argued was wrongly admitted. Third, he insists that the district court erred in increasing his sentencing level by two points for obstruction of justice.

Having reviewed the briefs, pertinent portions of the record, and the applicable law, we conclude that the district court did not commit reversible error. Specifically, we find that there was

sufficient evidence to support the appellants' convictions and sentences. Moreover, the district court did not err in its jury instructions or in its determinations under the sentencing guidelines. As for the appellants' ***Apprendi*** claims, we note that either ***Apprendi*** does not apply to the facts of the appellants' cases or the error was harmless. ***See United States v. Slaughter,*** 238 F.3d 580, 583-84 (5th Cir. 2001). Furthermore, we believe that any error in admitting the allegedly extraneous evidence was ultimately harmless. Nor do we conclude that the district court improperly limited Lemons's right to cross-examine one of the government's witnesses or that the district court and the government denied him his Sixth and Fourteenth Amendment rights. Finally, the district court did not abuse its discretion or commit any reversible error in denying Lemon's motion to sever and his motion for a bill of particulars. Accordingly, the appellants' judgments of conviction and sentences are

AFFIRMED.

EOD 5-30-20

AO 245B (Rev. 8/96) Sheet 1 - Judgment in a Criminal Case

United States District Court

Eastern District of Texas

UNITED STATES OF AMERICA
v.
ALBERT JOHN LEMONS

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 4:99CR00090-002

John Tatum / Michael Worthen
Defendant's Attorney

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAY 26 2000

DAVID J. MALAND, CLERK
BY DEPUTY

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.
- ☒ was found guilty on count(s) 1, 19 and 23 of the Indictment after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 U.S.C. § 846	Conspiracy to Possess with Intent to Distribute Cocaine Base	11/10/1999	1
21 U.S.C. § 841 (a)(1)	Possession with Intent to Distribute Cocaine Base	09/23/1999	19 & 23

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 463-27-9291
Defendant's Date of Birth: 08/20/1970
Defendant's USM No.: 07703-078
Defendant's Residence Address:
616 E. Heron
Denison TX 75020
Defendant's Mailing Address:
616 E. Heron
Denison TX 75020

05/19/2000
Date of Imposition of Judgment

Paul Brown
Signature of Judicial Officer

Paul Brown
United States District Judge
Name & Title of Judicial Officer

May 26, 2000
Date

6

BEST AVAILABLE COPY

DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 180 month(s).

on each of Counts 1, 19 & 23, all to be served concurrently

☒ The court makes the following recommendations to the Bureau of Prisons:

That defendant be incarcerated in an institution near his home in Grayson County, Texas.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

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DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 year(s).

on each count, all such terms to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☒ The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated below).

See Special Conditions of Supervision - Page 4

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-002

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall provide the probation officer with access to any requested financial information for purposes of monitoring his efforts to obtain and maintain lawful employment.

The defendant shall participate in a program of testing and treatment for alcohol and drug abuse, as directed by the probation officer, until such time as the defendant is released from the program by the probation officer.

DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-002

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
Totals:	$ 300.00	$	$

☐ If applicable, restitution amount ordered pursuant to plea agreement ..... $ _____

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $ _____.

The defendant shall pay interest on any fine of more than $2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ The interest requirement is waived.

☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such a determination.

☐ The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

Name of Payee	* Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment

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DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-002

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

A ☒ in full immediately; or

B ☐ $ _____ immediately, balance due (in accordance with C, D, or E); or

C ☐ not later than _____ ; or

D ☐ Payment to begin immediately. Any amount that remains unpaid when the defendant is placed on supervision is to be paid on a monthly basis at the rate of at least 10% of the defendant's monthly gross income, to be changed during supervision if needed, based on the defendant's changed circumstances, pursuant to 18 USC 3664 (k).

E ☐ in _____ *(e.g. equal, weekly, monthly, quarterly)* installments of $ _____ over a period of _____ year(s)to commence _____ day(s)after the date of this judgment.

The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

All criminal monetary penalty payments are to be made to the U.S. District Court, Fine & Restitution Section, 211 West Ferguson, Tyler, TX 75702, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program are

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DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-002

STATEMENT OF REASONS

☐ The court adopts the factual findings and guideline application in the presentence report.

OR

☒ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

See Additional Factual Findings and Guideline Application Exceptions - Page 8

Guideline Range Determined by the Court:

Total Offense Level: 34

Criminal History Category: II

Imprisonment Range: 168 to 210 months

Supervised Release Range: 5 years

Fine Range: $ 17,500.00 to $ 8,000,000.00

☒ Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $ _____

☐ Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

☐ For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

☐ Partial restitution is ordered for the following reason(s):

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

☒ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

To address the sentencing objectives of punishment, general deterrence and incapacitation.

OR

☐ The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following specific reason(s):

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DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-002

ADDITIONAL FINDINGS AND GUIDELINE APPLICATIONS EXCEPTIONS

Court ruled that the defendant's prior conviction for Riot Participation was similar to Disorderly Conduct, and should not receive a criminal history point pursuant to U.S.S.G. § 4A1.2(c)(1). As a result, the defendant's cirminal history category became II and his guideline imprisonment range became 168 to 210 months.

DEFENDANT: ALBERT JOHN LEMONS

CASE NUMBER: 4:99CR00090-002

DENIAL OF FEDERAL BENEFITS

(For Offenses Committed On or After November 18, 1988)

FOR DRUG TRAFFICKERS PURSUANT TO 21 U.S.C. § 862(a)

IT IS ORDERED that the defendant shall be:

☒ ineligible for all federal benefits for a period of 5 year(s).

☐ ineligible for the following federal benefits for a period of _____.
(specify benefit(s))

OR

☐ Having determined that this is the defendant's third or subsequent conviction for distribution of controlled substances, IT IS ORDERED that the defendant shall be permanently ineligible for all federal benefits.

FOR DRUG POSSESSORS PURSUANT TO 21 U.S.C. § 862(b)

IT IS ORDERED that the defendant shall be:

☐ ineligible for all federal benefits for a period of _____.

☐ ineligible for the following federal benefits for a period of _____.
(specify benefit(s))

☐ successfully complete a drug testing and treatment program.

☐ perform community service, as specified in the probation and supervised release portion of this judgment.

☐ Having determined that this is the defendant's second or subsequent conviction for possession of a controlled substance, IT IS FURTHER ORDERED that the defendant shall complete any drug treatment program and community service specified in this judgment as a requirement for the reinstatement of eligibility for federal benefits.

Pursuant to 21 U.S.C. § 862(d), this denial of federal benefits does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility. The clerk of court is responsible for sending a copy of this page and the first page of this judgment to:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	Cause No. 4:99CR 90
	§	(Judge Brown)
CHARLES RAY GENTRY, JR. (1)	§	
ALBERT JOHN LEMONS (2)	§	
aka "Tooter"	§	
TERRY WAYNE BRAXTON (3)	§	
JIMMIE RAY DANIELS (4)	§	
aka "Slim Jim"	§	
RONALD EUGENE KELLY (5)	§	
aka "Rahoo"	§	
aka "Ronald Morrison"	§	
CURLEY RAY MORRISON (6)	§	
PHILLIP DEWAYNE WRIGHT	§	
aka "Snake"	§	

INDICTMENT

The United States Grand Jury Charges:

COUNT 1

Violation: 21 U.S.C.§ 846 (Conspiracy to Possess with the Intent to Deliver Cocaine Base ("Crack Cocaine"))

That from in or about early 1998, the exact date unknown to the United States Grand Jury, and continuously thereafter up to and including the date of the filing of this indictment, in Grayson County in the Eastern District of Texas and elsewhere, CHARLES RAY GENTRY, JR., ("GENTRY"), ALBERT JOHN LEMONS aka

"Tooter" ("LEMONS"), TERRY WAYNE BRAXTON ("BRAXTON"), JIMMIE RAY DANIELS aka "Slim Jim" ("DANIELS"), RONALD EUGENE KELLY aka "Rahoo" aka Ronald Morrison ("KELLY"), CURLEY RAY MORRISON ("MORRISON"), AND PHILLIP DEWAYNE WRIGHT aka "Snake" ("WRIGHT"), defendants herein, did knowingly or intentionally combine, conspire, confederate or agree with each other or with persons known and unknown to the United States Grand Jury to knowingly or intentionally distribute or possess with the intent to distribute, or dispense 50 grams or more of a mixture or substance containing cocaine base ("crack" cocaine), all in violation of Title 21, United States Code, Section 841 (a)(1) and Title 18, United States Code, Section 2.

All in violation of Title 21, United States Code, Section 846.

MANNER AND MEANS

The co-conspirators used the following distribution scheme: See attached Demonstrative Chart (Exhibit "A"):

OVERT ACTS

1. On or about April 21, 1999, in Denison, Texas, WRIGHT distributed 0.52 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $50.00 U.S. Currency.

2. On or about April 21, 1999, in Denison, Texas, WRIGHT distributed 0.41 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $50.00 U.S. Currency.

3. On or about April 28, 1999, in Denison, Texas, WRIGHT and KELLY distributed 1.2 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $150.00 U.S. Currency.

4. On or about April 29, 1999, in Denison, Texas, WRIGHT and KELLY distributed 1.1 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $100.00 U.S. Currency.

5. On or about May 5, 1999, in Denison, Texas, KELLY and BRAXTON distributed 0.42 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $100.00 U.S. Currency.

6. On or about May 5, 1999, in Denison, Texas, WRIGHT distributed 0.31 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $60.00 U.S. Currency.

7. On or about May 6, 1999, in Denison, Texas, WRIGHTdistributed 0.11grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $40.00 U.S. Currency.

8. On or about May 11, 1999, in Denison, Texas KELLY distributed 0.21grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $60.00 U.S. Currency.

9. On or about May 13, 1999, in Denison, Texas, KELLY distributed 0.31 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $50.00 U.S. Currency.

10. On or about May 18, 1999, in Denison, Texas, DANIELS, BRAXTON and GENTRY distributed 0.31 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $80.00 U.S. Currency.

11. On or about May 20, 1999, in Denison, Texas, BRAXTON distributed 1.7 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $200.00 U.S. Currency.

12. On or about May 25, 1999, in Denison, Texas, BRAXTON distributed 2.4 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $250.00 U.S. Currency.

13. On or about May 27, 1999, in Denison, Texas, BRAXTON distributed 2.7 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $250.00 U.S. Currency.

14. On or about June 3, 1999, in Denison, Texas, BRAXTON distributed 7.0 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $500.00 U.S. Currency.

15. On or about June 7, 1999, in Denison, Texas, BRAXTON distributed 6.4 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $500.00 U.S. Currency.

16. On or about June 8, 1999, in Denison, Texas, KELLY and a juvenile male distributed 3.3 grams net weight of cocaine base to a person know to the United States Grand Jury in exchanges for $150.00 U.S. Currency.

17. On or about June 9, 1999, in Denison, Texas, BRAXTON, LEMONS and DANIELS distributed 9.7 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $1,000.00 U.S. Currency.

18. On or about June 16, 1999, in Denison, Texas, BRAXTON distributed 5.5 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $750.00 U.S. Currency.

19. On or about June 22, 1999, in Denison, Texas BRAXTON distributed 12.1 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $1,000.00 U.S. Currency.

20. On or about June 23, 1999, in Denison, Texas, KELLY distributed 1.6 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $200.00 U.S. Currency.

21. On or about July 15, 1999, in Denison, Texas, BRAXTON and LEMONS distributed 12.3 grams net weight of cocaine base to a person known to the United States Grand jury in exchange for $1,000.00 U.S. Currency after meeting with LEMONS.

22. On or about August 3, 1999, in Denison, Texas, BRAXTON distributed 4.3 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $500.00 U.S. Currency.

23. On or about September 1, 1999, in Denison, Texas, BRAXTON and MORRISON distributed 12.3 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $1,000.00 U.S. Currency.

24. On or about September 22, 1999, in Denison, Texas, MORRISON distributed 0.90 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $100.00 U.S. Currency.

25. On or about September 23, 1999, in Denison, Texas, MORRISON distributed 0.41 grams net weight of cocaine base to a person known to the United States Grand Jury in exchange for $40.00 U.S. Currency.

COUNT 2

Violation: 21 USC § 841(a)(1)(Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about April 21, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, PHILLIP DEWAYNE WRIGHT, Defendant herein, did knowlingly and unlawfully possess with the intent to distribute or distribute approximately 0.52 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 3

Violation: 21 USC § 841(a)(1)(Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about April 21, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, PHILLIP DEWAYNE WRIGHT, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.41 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States, Code, Section 841(a)(1).

COUNT 4

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine") and 18 USC § 2 (Aiding and Abetting)

On or about April 28, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, PHILLIP DEWAYNE WRIGHT and RONALD EUGENE KELLY, Defendants herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 1.2 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 5

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine") and 18 USC § 2 (Aiding and Abetting)

On or about April 29, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, PHILLIP DEWAYNE WRIGHT and RONALD EUGENE KELLY, Defendants herein, did knowingly and unlawfully possess with the intent to distribute or

distribute approximately 1.1 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 6

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine") and 18 USC § 2 (Aiding and Abetting)

On or about May 5, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, RONALD EUGENE KELLY and TERRY WAYNE BRAXTON, Defendants herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.42 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 7

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about May 5, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, PHILLIP DEWAYNE WRIGHT, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.31 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 8

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about May 6, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, PHILLIP DEWAYNE WRIGHT, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.11 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 9

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about May 11, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, RONALD EUGENE KELLY, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.21 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 10

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about May 13, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, RONALD EUGENE

KELLY, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.31 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 11

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine") and 18 USC § 2 (Aiding and Abetting)

On or about May 18, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, JIMMIE RAY DANIELS, TERRY WAYNE BRAXTON and CHARLES RAY GENTRY, JR., Defendants herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.31 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 12

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about May 20, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, Defendant herein did knowingly and unlawfully possess with the intent to distribute or distribute approximately 1.7 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 13

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about May 25, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 2.4 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 14

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about May 27, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 2.7 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 15

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about June 3, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE

BRAXTON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 7.0 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 16

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about June 7, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 6.4 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 17

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about June 8, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, RONALD EUGENE KELLY, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 3.3 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 18

Violation: 21 USC § 861(a)(1) (Employment of persons under 18 years of age) and 841(a)(1)

On or about June 8, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, RONALD EUGENE KELLY, Defendant herein, a person at least 18 years of age, knowingly and intentionally employed, hired, used, persuaded, induced, enticed and coerced a person known to the United States Grand Jury who is under 18 years of age, to distribute and possess with the intent to distribute cocaine base ("crack cocaine") in violation of Title 21, United States Code, Section 841(a)(1).

All in violation of Title 21, United States Code, Sections 861 (a)(1) and 841(a)(1).

COUNT 19

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine") and 18 USC § 2 (Aiding and Abetting)

On or about June 9, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, ALBERT JOHN LEMONS and JIMMIE RAY DANIELS, Defendants herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 9.7 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 20

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about June 16, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 5.5 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 21

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about June 22, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 12.1 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841 (a)(1).

COUNT 22

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about June 23, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, RONALD EUGENE

KELLY, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 1.6 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841 (a)(1).

COUNT 23

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine") and 18 USC § 2 (Aiding and Abetting)

On or about July 15, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON and ALBERT JOHN LEMONS, Defendants herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 12.3 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841 (a)(1) and Title 18, United States Code, Section 2.

COUNT 24

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about August 3, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 4.3 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841 (a)(1).

COUNT 25

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine") and 18 USC § 2 (Aiding and Abetting)

On or about September 1, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, TERRY WAYNE BRAXTON and CURLEY RAY MORRISON, Defendants herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 12.3 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

COUNT 26

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about September 22, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, CURLEY RAY MORRISON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.90 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 27

Violation: 21 USC § 841(a)(1) (Possession with the intent to distribute or distribution of cocaine base ("crack cocaine")

On or about September 23, 1999, in Denison, Grayson County, Texas, in the Eastern District of Texas, CURLEY RAY MORRISON, Defendant herein, did knowingly and unlawfully possess with the intent to distribute or distribute approximately 0.41 grams net weight of cocaine base ("crack cocaine").

All in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL

_____

FOREMAN OF THE GRAND JURY

MIKE BRADFORD
United States Attorney

_____

HEATHER RATTAN, AUSA

SPECIAL RULES CONCERNING FINES, RESTITUTION, SPECIAL ASSESSMENTS, AND SUPERVISED RELEASE

FINES (18 U.S.C. § 3571):

A defendant who has been found guilty of an offense may be sentenced to pay a fine. Except as otherwise provided, the authorized fines are:

1. If the defendant is an individual:

(a) for a felony, or for a misdemeanor resulting in the loss of human life, not more than $250,000;

(b) for any other misdemeanor, not more than $100,000.

RESTITUTION (18 U.S.C. § 3663):

The court may order in addition to or in lieu of any other penalty authorized by law that the defendant make restitution as defined in this section to any victim of the offense.

SPECIAL ASSESSMENT (18 U.S.C. § 3013):

The court shall assess the amount of $50.00 on any person convicted of a felony offense against the United States if the offense occurred before April 24, 1996. The court shall assess the amount of $100.00 on any person convicted of a felony offense against the United States if the offense occurred on or after April 24, 1996.

SUPERVISED RELEASE (18 U.S.C. § 3583):

Except as otherwise provided, the authorized terms of supervised release are --

1. for a Class A (imprisonment for 26 years to life) or a Class B (not more than 25 years) felony, not more than 5 years;
2. for a Class C (not more than 12 years) or a Class D (not more than 6 years) felony, not more than 3 years;
3. for a Class E (not more than 3 years, but more than 1 year) felony or misdemeanor (other than a petty offense), not more than 1 year.

Title 18 U.S.C.§ 3559 sets forth the classification of offenses for sentencing purposes.